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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

RICKY EARL JOHNSON, JR.,

Defendant and Appellant.

E057182

(Super.Ct.No. FVI1102142)

OPINION

APPEAL from the Superior Court of San Bernardino County. Jules E. Fleuret,  
Judge. Affirmed.

Russell S. Babcock, under appointment by the Court of Appeal, for Defendant and  
Appellant.

No appearance for Plaintiff and Respondent.

## INTRODUCTION

On September 28, 2011, an information charged defendant and appellant Ricky Earl Johnson, Jr., and a codefendant with various crimes and allegations. Defendant was charged with the following offenses: two counts of second degree robbery (Pen. Code, § 211,<sup>1</sup> counts 1 & 2); possession of a firearm by a felon (§ 12021, subd. (a)(1), count 3); and street terrorism (§ 186.22, subd. (a), count 5). The information also alleged that defendant personally used a handgun (§ 12022.53, subds. (b) & (e)(1)), that the crimes were committed for the benefit of a criminal street gang (§ 186.22, subds. (b)(1)(A) & (b)(1)(C)), and that defendant had suffered three prior convictions (§ 667.5, subd. (b)).

On July 10, 2012, the fourth day of a jury trial, defendant withdrew his not guilty plea, pled guilty to second degree robbery (§ 211, count 1), and admitted the gang enhancement (§ 186.22, subd. (b)(1)(C)). On the People's motion, the trial court dismissed all the remaining counts and allegations.

On September 13, 2012, the trial court denied probation and sentenced defendant to 13 years in state prison. The court imposed the midterm of three years for count 1 and an additional 10-year consecutive sentence for the gang enhancement. Defendant was awarded a total of 430 days of credit for time served, consisting of 366 actual days and 64 conduct days. Defendant was also ordered to pay various fines and fees. On October 1, 2012, appellate counsel filed an amended notice of appeal "based on the sentence or other matters occurring after the plea."

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise identified.

## **STATEMENT OF FACTS<sup>2</sup>**

On September 13, 2011, the victims were working at a discount store in Hesperia. Around 7:20 p.m., two men wearing gloves and covering their faces with small masks or bandanas walked into the store with their guns drawn. They pointed their guns at the victims, demanded money, and told one of the victims to open the cash register. One of the men grabbed the money from the cash register and stuffed it in his pocket, asking where the rest of the money was. He was told there was no other money. He then picked up a few dollars lying on the counter and grabbed a black bag containing hair clippers, which was sitting on top of a photocopier. The other man grabbed a purse belonging to one of the victims. The suspects took approximately \$2,816.

Both men ran out of the store. One of the victims saw them drive away in a black Nissan Titan pickup truck, which was missing its license plates.

Deputy Pelayes responded to the store to investigate a possible robbery. Around the same time, defendant and his codefendant were detained in a black pickup truck. Two of the victims were taken to the area where the suspects and pickup truck were detained to see if they could identify the two men who had committed the robbery. One of the victims identified the codefendant as one of the robbers, but was not able to identify defendant. One of the victims identified the pickup truck as the same truck she had seen leaving the scene of the robbery. The pickup truck was searched by the deputies. They found a purse and a black case containing hair clippers inside the truck.

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<sup>2</sup> The statement of facts is based on the evidence presented during the terminated trial and the preliminary hearing.

Deputy Solario testified at the preliminary hearing as a gang expert. He identified both defendant and his codefendant as members of the Five Time Hometown Gangster Crips, otherwise known as the Five Time Crips, a gang with around 80 documented members. The deputy testified that there was a civil injunction against the Five Time Crips in effect in San Bernardino County, and that defendant had been named in that injunction.

Both defendant and his codefendant had “5” tattooed on the back of their left arms and “X” tattooed on the back of their right arms. “5X” is a Five Time Crips symbol. Defendant also had “105%”—another Five Time Crips symbol—tattooed below his left ear. Also, both defendant and his codefendant had parole terms that prohibited them from associating with members of the Five Time Crips.

The Five Time Crips engaged in a pattern of criminal activity that included armed robbery, the sale of crack cocaine, and burglary. Deputy Solario opined that the crime committed at the discount store was committed for the benefit of the gang because it would create revenue for the gang, enhance the statuses of both defendant and his codefendant, and promote the gang’s notoriety.

## ANALYSIS

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, a summary of the facts and potential arguable issues, and requesting that this court review the entire record.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

## DISPOSITION

The judgment is affirmed.

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McKINSTER  
J.

We concur:

HOLLENHORST  
Acting P. J.

RICHLI  
J.